

7 June 1968

ALDE MEMOIR FOR AMBASSADOR KOMER

SUBJECT: Emergency Legal Processes

1. In recent weeks and months, various political figures (members and non-members of the National Assembly), writers, and others have suggested or demanded the abolition of special courts and procedures. These demands now are becoming more insistent as the National Assembly becomes more active, the Cabinet changes, and implementation of the new Constitution proceeds.

2. The following institutions of interest are involved:

- a) Military Courts (Jurisdiction to try Civilian Security Suspects)
- b) Security Committees (Provincial and Central)
- c) Special Court (Corruption cases)

3. A procedure for administrative detention of those found dangerous to the National Security was prescribed in Ordinance No. 6, signed 11 January 1956 by President Diem. This has been modified since by various ministerial orders, to create the present system of Provincial Security Committees and a Central Security Committee in Saigon.

4. Pursuant to various presidential decrees, based on the states of emergency and of war, Civilian Security Suspects are tried in the military courts -- regular and field. The field courts provide the most expeditious procedure and their use is being emphasized for these cases. Four new field courts were authorized by Decree-Law No. 049/67 of 30 October 1967. One such new court has been organized in Saigon for the III CTZ.

Aide Memoir for Ambassador Komer

Page 2

5. It does not seem at all feasible, at this time, to abolish the Security Committees or the jurisdiction of the military courts to try Civilian Security Suspects. The civilian court system is not now able to assume the burden and take the necessary action.

6. The Special Court was created by Presidential Decree-Law No. 003/66 of 15 February 1966, to handle corruption offenses during the state of war. It is not strictly speaking a military court, but is to employ the procedures specified for Military Field Courts and its present members are military men.

7. Careful study should precede any abolition of the Special Court, to be certain that the civilian courts will be willing and able to assume exclusive responsibility for taking expeditious and effective action against corruption.

8. It is true that the new Constitution does not make any provision for the emergency legal processes discussed above. Furthermore, it can be argued that the spirit of the document is contrary thereto. The Constitution stated (Article 77):

"Every court must be established by law
(italics added) with an element that judges
and an element that prosecutes, both of which
are professionally qualified. Courts must
respect rights of defense."

9. The Republic of Vietnam, nevertheless, must see to its own preservation at this juncture and take the necessary legal measures to deal with subversion and insurgency. This is the type situation which has been handled, without the destruction of democracy, in Malaysia and perhaps elsewhere. I am traveling to Malaysia and Singapore on 8 June, to study what legal measures were developed and used there by the British and by the new governments, to deal with this type problem. Results will be reported.

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MEMORANDUM FOR THE PRIME MINISTER

Recently there have appeared in the public media in Saigon suggestions that special courts and procedures for dealing with offenses against the National Security be abolished, as not consistent with the new Constitution of the Republic of Vietnam.

I am, of course, particularly aware of the need and desire to implement the new Constitution and to establish normal democratic processes as rapidly as possible. At the same time, in view of the present grave threat to the nation and to all democratic institutions, it appears that changes should be approached with great care.

Your country faces a most difficult and challenging task today: to develop the framework and processes of democratic institutions and self-government, but at the same time to be able to invoke, during this period of crisis, emergency measures necessary to protect this new democracy, its people and its important programs which are underway.

We are working with you on an extremely vital program for dealing with the Viet Cong Infrastructure. Suspects who are arrested or captured must be processed through legal channels in an expeditious and efficient manner, which at the same time is fair and just to the individual.

Even using current procedures, the cases are not being handled at a sufficiently rapid rate, which has resulted in serious overcrowding of the limited detention facilities and, at times, prolonged detention of suspects before their cases are heard. I fear that the sudden and exclusive application of full peacetime judicial procedures may seriously aggravate this situation and also that the necessary additional trained civilian judicial, legal and administrative personnel cannot now be found.

In dealing with these and other problems, the democratic spirit of your government is your great asset and will, I am sure, enable you to adjust and coordinate the various requirements of war and peace in the legal and constitutional field.

I will be glad to discuss this matter personally with you as you may desire, and to have a qualified member of my staff confer with your officials on the technical aspects.

256